MOTION TO ADVANCE.

Supreme Court of the United States

OCTOBER TERM, 1904.

No. 299.

BERYL F. CARROLL, AUDITOR OF STATE OF THE STATE OF IOWA, APPELLANT,

v.

THE GREENWICH INSURANCE COMPANY OF NEW YORK ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

MOTION TO ADVANCE.

The above named appellant respectfully moves the Court that this cause be advanced upon the calendar for hearing and submission upon a day certain to be fixed by this Honorable Court, and shows the following grounds for such motion:

I.

The appellant, as Auditor of State of the State of Iowa, is, by the decree of the court below, appealed from herein, enjoined and restrained from enforcing against the Insurance Companies, appellees herein, certain laws of the State of Iowa prohibiting said Insurance Companies and others from entering into any combination or agreement relating to rates to be charged for insurance, or the amounts of commissions to be allowed agents for procuring the same, or the manner of transacting the fire insurance business within the State of Iowa; and also authorizing and requiring appellant, as such public officer of the State of Iowa to revoke the authority of said Insurance Companies, appellees herein, and other non-resident and foreign insurance companies, to transact insurance business in the State of Iowa where they are found by him upon inquiry and examination to be guilty of violating said laws.

Such decree of the court below, appealed from herein, amounts to a license authorizing said Insurance Companies, appellees herein, to violate and disregard said laws of the State of Iowa, and to enter into unlawful combinations at their will and pleasure, fixing exorbitant rates of insurance to be charged the citizens and people of the State of

Iowa while said decree and injunction remains in force and unreversed.

The people of the State of Iowa are wholly without remedy to recover back exorbitant rates of insurance which may thus and thereby be extorted from them under licenses granted to the Insurance Companies, appellees, while the decree of the court below remains unreversed.

The Government of the State of Iowa is thus and thereby embarrassed in its operations in the due and lawful protection of its citizens and people while the questions in this cause remain unsettled, and while appellant is thus enjoined and restrained from enforcing its laws.

II.

The questions involved in this cause as above stated are of great and general public importance to the State of Iowa and to its people, as well as to all the other States as touching the power of said State of Iowa, and the other States, to prohibit and prevent non-resident and foreign insurance companies within its and their limits from entering into combinations and compacts establishing exorbitant and unjust rates to be charged for insurance within said State, and within the other States.

WHEREFORE, appellant prays that this cause may be advanced upon the calendar for hearing and submission.

CHAS. W. MULLAN,
Attorney General of Iowa,
for Appellant.

CHAS. A. CLARK,
of Counsel.

STATEMENT AND POINTS IN SUPPORT OF MOTION.

I.

STATEMENT.

Chapter 4 of Title IX of the Code of Iowa, 1897, as to fire insurance companies provides as follows:

Sec. 1722 requires any fire insurance company desiring to transact business in the State of Iowa to make application to the Auditor of State.

Sec. 1724. "CERTIFICATE. When any foreign company has fully complied with the requirements of law and become entitled to do business, the auditor of state shall issue to such company a certificate of that fact, which certificate shall be renewed annually on the first day of March, if the auditor is satisfied that the capital, securities and investments of such company remain unimpaired, and the company has complied with the provisions of law applicable thereto."

Sec. 1725. "AGENT TO HAVE CERTIFICATE OF AUTHORITY. No agent shall directly or indirectly act for any insurance company referred to in this chapter, in taking risks or transacting business of insurance in the state, without procuring from the auditor of state a certificate of authority to the effect that such company has complied with all the requirements of this chapter."

Sec. 1747. "DOING BUSINESS WITHOUT COMPLIANCE. Every insurance company organized under the laws of or doing business in this state shall conform to all the

provisions of this chapter and to other laws of this state whether now existing or hereafter enacted, applicable thereto, and when necessary any existing company shall change its charter and by-laws so as to conform thereto, by a vote of a majority of its board of directors." * * *

All of the foregoing sections were contained in the Code of Iowa of 1873, and have been in force since that date.

ANTI-COMPACT ACT.

Sec. 1754. "COMBINATIONS. It shall be unlawful for two or more fire insurance companies doing business in this state, or for the officers, agents or employes of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring the same, or the manner of transacting the fire insurance business within this state; and any such company, officer, agent or employe violating this provision shall be guilty of a misdemeanor, and on conviction thereof shall pay a penalty of not less than one hundred dollars nor more than five hundred dollars for each offense, to be recovered in the name of the state for the use of the permanent school fund." (26 G. A., ch. 22, Par. 1.)

Sec. 1755. "REVOCATION OF AUTHORITY. The auditor of state is authorized to summon before him, for examination under oath, any officer, agent or employe of any such company suspected of violating any of the provisions of the preceding section, and, on complaint to him in writing by two or more residents of this state charging such com-

pany under oath upon their knowledge or belief with violating the provisions of the preceding section, he shall summon any officer, agent or employe of said company before him for examination under oath; if upon such examination, and that of any other witness produced and examined, he shall determine that such company is guilty of a violation of any of the provisions of the preceding section, or if any such officer, agent or employe after being duly summoned shall fail to appear or submit to examination, the auditor shall forthwith issue an order revoking the authority of such company to transact business within this state, and it shall not thereafter be permitted to do the business of fire insurance in this state at any time within one year therefrom." (Same, Par. 2.)

Sec. 1756. "APPEAL. Either party may appeal from the decision of the auditor, made pursuant to the preceding section, to the district court of the county where the same was made, within twenty days from the time of the rendition of such decision, by serving a written notice of such appeal on the opposite party and on the auditor, and filing with the clerk of said court a good and sufficient bond for the payment of all costs on the appeal in case the decision shall be affirmed. On such appeal said court shall try the case *de novo*, as equitable cases are tried, and on such evidence as either party may produce, and may reverse, modify or affirm the decision of the auditor." (Same, Par. 3.)

The last three sections above set out were originally passed in 1896 by the Twenty-Sixth General Assembly, and have been in force since that date.

The bill in this suit seeks to enjoin appellant as Auditor of State of the State of Iowa from in any manner enforcing any of the provisions of sections 1754, 1755, and 1756 of the Code of Iowa, and from revoking the authority of the Insurance Companies, appellees, or any of them, or any fire insurance companies similarly situated, for transacting business within the State on account of alleged violation of the provisions of section 1754, and from instituting any proceeding of any kind or character designed to enforce the provisions of section 1754.

(See Bill, Record, pp. 1 to 9, and Prayer for Relief, Record, pp. 8 and 9.)

The decree of the court below enjoins and restrains appellant and his successors in office from enforcing the above Laws of Iowa as prayed for in and by the Bill,—said decree being in all respects as broad as the prayer for relief.

(See Record, pp. 29-31)

POINTS.

I.

It thus appears that the powers of the State government acting by and through its appointed officer, appellant, as Auditor of State, are absolutely paralyzed, nullified and abrogated as to the enforcement of its laws for the protection of its people against exorbitant insurance rates by the decree of the court below.

It appears that this is done at the prayer of foreign insurance companies, several of whom are corporations of

Great Britain, and all of whom are required to make application to the Auditor of State for leave to transact business in Iowa, subject to all of the laws of Iowa.

II.

A license is thus secured from the Federal Courts for foreign insurance companies to violate the laws of Iowa, and to enter into such compacts and agreements as they see fit for extorting exorbitant rates from the people of Iowa. This extortion may go on so long as the license thus secured remains in force. No method can be devised by which the people may recover back the extortionate rates which they are compelled to pay.

III.

To abrogate and nullify said laws in this manner and to authorize and license their violation in the matter of extortionate insurance rates is to deprive the State of power to protect its citizens and people and to seriously harrass and impair the rights of the sovereign State to maintain good government within its own confines, and within its exclusive jurisdiction.

IV.

The powers of government of all the States, as well as the State of Iowa, are involved in the questions presented.

It is respectfully submitted that these questions are of such great and general importance that the cause should be advanced for hearing.

CHAS. W. MULLAN,
Attorney General of Iowa,
for Appellant.

CHAS. A. CLARK,
of Counsel.

NOTICE.

The appellees in the above entitled cause, and their attorneys, are hereby notified that the foregoing motion, and showing in support thereof, will be submitted to the Supreme Court of the United States at its regular session in Washington, D. C., on the 19th day of December, 1904, at twelve o'clock, noon, or as soon thereafter as counsel can be heard.

CHAS. W. MULLAN,
Attorney General of Iowa,
for Appellant.

CHAS. A. CLARK,
of Counsel.

Service of the above and foregoing notice is accepted, and copy thereof, together with annexed motion and showing, received, this.....day of December, 1904.

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Attorneys for Appellees.